UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,584	10/23/2003	Hideo Sugimori	1344.1126	6740

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EXAMINER
MANSFIELD, THOMAS L

ART UNIT	PAPER NUMBER
3624	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *08 May 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-10* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

Response to Amendments

1.   This Continued Examination Office Action is in reply to the Request for Continued Examination filed on 8 May 2009.

2.   Claims 1-11 were subject to election/restriction by original presentation.

3.   Claims 1, 3-5, and 7-10 have been amended.

4.   Claim 11 has been withdrawn from consideration.

5.   Claims 1-10 are currently pending and have been examined.

Continued Examination Under 37 CFR 1.114

6.   A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection.   Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 8 May 2009 has been entered.

Response to Amendment
Constructive Election/Restriction

7.   The office action mailed 9 December 2008 required new Claim 11 subject to restriction/election. The Examiner constructively elected by original presentation to examine Claims 1-10 and withdrew Claim 11 as being directed to a non-elected invention.

8.   Applicants submit that the restriction/election asserted by the office action is incorrect.   The Examiner respectfully disagrees.   As stated on page 2 of the office action, subcombination II

(Claim 11) has separate utility such as the manager is provided with a policy rating based upon a number of <u>clients</u> (now amended as "computers") operating under the corresponding policy, overall operation time of the corresponding policy among the plurality of <u>clients</u> (now amended as "computers"), and a number of applications running on the <u>client</u> (now amended as "computers") to be managed, and does not require the sending back the created policy list to a manager as required in subcombination I (Claim 1). Therefore, the constructive restriction/election requirement is made final and Claim 11 is withdrawn from further consideration.

Response to Arguments

9.   Applicant's arguments filed 8 May 2009 have been fully considered but they are moot in view of new grounds of rejection.

Claim Rejections - 35 USC § 102

10.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

11.   Claims 1-5 and 7-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Yang et al (Yang) (U.S. Pub. No. 2002/0169625).

With regard to Claims 1, 7, and 9, Yang teaches *an operations management* policy *distributing method, apparatus, and program* (contract management mechanism) *for a computer network* (client **106**, computer) *system having a plurality of computers* (see at least the Abstract and paragraphs 6-10)*, comprising:*

- *upon receiving inventory information specifying an inventory* (a quota of resources that be consumed under the contract) *based upon one of hardware and software* (hardware circuitry and software) *of a computer* (client **106**, computer) *to be managed, retrieving from a database operations management policies* (license, license management software **152**, software database **144**) *corresponding to the specified inventory* (particular set of software) *and creating a policy list detailing operations management policies suited to the inventories specified by said inventory information* (lists terms of a license) (see at least paragraphs 6-10, 25-29, 46, and 91);

- *sending back the created policy list to a manager* (interact with the management system 102, submit an inquiry for a quote) (see at least paragraphs 26-28);

- *upon receiving selection information indicating the selection by the manager of at least one operations management policy from said created policy list, retrieving from said database and acquiring the operations management policy specified by said selection information* (select and license a set of software, contracts database **134**,, set of terms or rules) (see at least paragraphs 27-36 and 43-48);

- *sending back the retrieved operations management policy to the computer to be managed* (deploying the licenses and software, licensed software **154** is ready to be run) (see at least paragraphs 44-47).

With regard to Claim 2, Yang teaches:

- *appropriately storing said inventory information in a database* (software database **144**) (see at least paragraph 46);

- *extracting a difference between said inventory information and the inventory information stored in said database when said inventory information is received* ("remix"), *wherein said step of creating a policy list, retrieves from said database and creates a policy list suited to the inventory specified by said difference* (alter the license) (see at least paragraphs 46-48).

With regard to Claim 3, Yang teaches:

- *appropriately storing in a database usage frequencies* (amount of resources that were consumed) *of the operations management policies applied to said computer to be managed* (see at least paragraphs 48-50).

- *appending the usage frequencies stored in said database to each of the operations management policies detailed in said policy list* (pro rata basis) (see at least paragraphs 48-50).

With regard to Claim 4, Yang teaches *the number of references, the operating time and the number of applications of each of the operations management policies applied to said computer to be managed* (specifics of the database, pro rata basis) (see at least paragraphs 48-50).

With regard to Claims 5, 8, and 10, Yang teaches *an operations management* policy *distributing method, apparatus, and program* (contract management mechanism) *for a computer network* (client **106**, computer) *system having a plurality of computers* (see at least the Abstract and paragraphs 6-10)*, comprising:*

- *upon receiving inventory information specifying an inventory* (a quota of resources that be consumed under the contract) *based upon one of hardware and software* (hardware circuitry and software) *of a computer* (client **106**, computer) *to be managed, retrieving from a database operations management policies* (license, license management software **152**, software database **144**) *corresponding to the*

specified inventory (particular set of software) *and acquiring operations management policies suited to the inventory specified by said inventory information* (terms or rules specified in the contract) (see at least paragraphs 6-10, 25-29, 38-48, and 91);

- *sending back the acquired operations management policy* (Licensing Deployment Mechanism) (see at least paragraphs 43-48).

With regard to Claim 6, Yang teaches *setting for each operations management policy whether or not the deletion is allowable* (cancels the license, deleting the licensing from the database **142**), *wherein said step of acquiring said operations management policy necessarily acquires those operations management policies set as non-deletable policies regardless of their usage frequency* (see at least paragraphs 47-48 and 83-87).

Conclusion

12.   The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Wiegal (U.S. 6,484,261) discloses a graphical network security policy management.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to THOMAS MANSFIELD whose telephone number is (571)270-1904. The examiner can normally be reached on Monday-Thursday 8:30 am-6 pm, alt. Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on 571-272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/T. M./
Examiner, Art Unit 3624

23 July 2009
Thomas Mansfield

/Bradley B Bayat/
Supervisory Patent Examiner, Art Unit 3624